

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VALERY KOTLYAROFF,

Plaintiff,
vs.

No. CIV S- 05-0406 GGH

JO ANNE B. BARNHART,
Commissioner of
Social Security,

Defendant.

ORDER

Plaintiff, proceeding with counsel, filed this action seeking judicial review of a decision of the Commissioner of Social Security ("Commissioner") denying his application for Social Security benefits pursuant to Titles II and XVI of the Social Security Act ("Act"). On August 5, 2005, the Commissioner filed a motion to dismiss this action on the ground that plaintiff failed to file his complaint within sixty days after receipt of a final decision of the Commissioner. Plaintiff failed to file opposition or otherwise respond to the motion.

On September 29, 2005, plaintiff was directed to show cause, within twenty days, why the court should not recommend the Commissioner's motion be granted and this action be dismissed. Plaintiff was cautioned that failure timely to respond to the order would result in a recommendation that this action be dismissed. Plaintiff did not respond to the order to show cause.

1 This court's scheduling order, filed March 2, 2005, directed plaintiff to file an
2 opposition to defendant's response. That order provided that "FAILURE TO COMPLY WITH
3 ANY PORTION OF THIS SCHEDULE MAY RESULT IN SANCTIONS, INCLUDING
4 STRIKING A MOTION FROM CALENDAR, OR STRIKING THE COMPLAINT OR
5 ANSWER." Local Rule 11-110 provides that failure to comply with any order of the court "may
6 be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or
7 within the inherent power of the Court."

8 "Failure to follow a district court's local rules is a proper ground for dismissal."
9 Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Moreover, failure to obey court orders is a
10 separate and distinct ground for imposing the sanction of dismissal. Id.; Ferdik v. Bonzelet, 963
11 F.2d 1258, 1260-61 (9th Cir.1992) (dismissal for failure to comply with an order requiring
12 amendment of complaint).

13 In determining to dismiss this action, the court has considered the factors set forth
14 in Ghazali. Plaintiff's failure to comply with the Local Rules has impeded the expeditious
15 resolution of the instant litigation and has burdened the court's docket, consuming scarce judicial
16 resources in addressing litigation which plaintiff demonstrates no intention to pursue. Although
17 public policy favors disposition of cases on their merits, plaintiff's failure to oppose the pending
18 motion has precluded the court from considering opposition, if any, to the Commissioner's
19 motion. In addition, defendant is prejudiced by bearing the costs of responding to litigation
20 plaintiff fails to pursue. Finally, the court has granted ample additional time to oppose the
21 pending motion or to show cause why it should not be granted, all to no avail. The court
22 therefore concludes that there is no suitable alternative disposition to dismissal of this action.

23 Moreover, the court has reviewed the Commissioner's motion to dismiss the
24 action as time barred and finds that it has merit. Plaintiff failed to file this action within sixty
25 days after receipt of the final decision. 42 U.S.C. §1383(c)(3); 42 U.S.C. § 405(g) & (h);
26 Matlock v. Sullivan, 908 F.2d 492, 493 (9th Cir. 1990). While the statute of limitations is

1 subject to equitable tolling, there are no facts demonstrating this case merits tolling. See Bowen
2 v. City of New York, 476 U.S. 467, 483, 106 S. Ct. 2022, 2030 (1986).

3 Accordingly, IT IS ORDERED that the Commissioner's motion to dismiss is
4 granted and this action is dismissed.

5 DATED: 11/16/05

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
U.S. MAGISTRATE JUDGE

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